

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDERICK GATLIN,

No. C 07-03696 CW (PR)

Petitioner,

ORDER GRANTING IN FORMA
PAUPERIS STATUS, DIRECTING
RESPONDENT TO SHOW CAUSE WHY
THE PETITION SHOULD NOT BE
GRANTED, AND DENYING MOTION FOR
APPOINTMENT OF COUNSEL

v.

JAMES TILTON,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also seeks leave to proceed in forma pauperis. It does not appear from the face of the petition that it is without merit. Good cause appearing, the Court hereby issues the following orders:

1. Petitioner's application to proceed in forma pauperis is GRANTED.

2. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.

3. Respondent shall file with this Court and serve upon Petitioner, within sixty (60) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

1 4. If Petitioner wishes to respond to the Answer, he shall
2 do so by filing a Traverse with the Court and serving it on
3 Respondent within thirty (30) days of his receipt of the Answer.
4 Should Petitioner fail to do so, the petition will be deemed
5 submitted and ready for decision thirty (30) days after the date
6 Petitioner is served with Respondent's Answer.

7 5. Respondent may file a motion to dismiss on procedural
8 grounds in lieu of an Answer, as set forth in the Advisory
9 Committee Notes to Rule 4 of the Rules Governing Section 2254
10 Cases. If Respondent files such a motion, Petitioner shall file
11 with the Court and serve on Respondent an opposition or statement
12 of non-opposition to the motion within thirty (30) days of receipt
13 of the motion, and Respondent shall file with the Court and serve
14 on Petitioner a reply within fifteen (15) days of receipt of any
15 opposition.

16 6. It is Petitioner's responsibility to prosecute this case.
17 Petitioner must keep the Court and Respondent informed of any
18 change of address and must comply with the Court's orders in a
19 timely fashion. Petitioner must also serve on Respondent's counsel
20 all communications with the Court by mailing a true copy of the
21 document to Respondent's counsel.

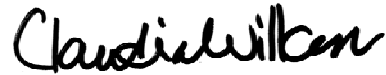
22 7. Extensions of time are not favored, though reasonable
23 extensions will be granted. Any motion for an extension of time
24 must be filed no later than ten (10) days prior to the deadline
25 sought to be extended.

26 8. Petitioner's motion for appointment of counsel is DENIED
27 without prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728
28 (9th Cir. 1986) (unless an evidentiary hearing is required, the

1 decision to appoint counsel in habeas corpus proceedings is within
2 the discretion of the district court). Petitioner clearly
3 presented his claims for relief in the petition and an order to
4 show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228,
5 1234 (9th Cir. 1984) (although petitioner had no background in law,
6 denial of appointment of counsel within discretion of district
7 court where petitioner clearly presented issues in petition and
8 accompanying memorandum). The Court will appoint counsel on its
9 own motion if an evidentiary hearing is later required. See
10 Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if
11 evidentiary hearing is required).

12 IT IS SO ORDERED.

13 Dated: 9/17/07



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK GATLIN,

Plaintiff,

v.

JAMES TILTON et al,

Defendant.

Case Number: CV07-03696 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 17, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: September 17, 2007

Richard W. Wieking, Clerk

By: Sheilah Cahill, Deputy Clerk